

**KENTUCKY PERSONNEL BOARD**  
**MINUTES OF AUGUST 12, 2016**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chairman Larry Gillis on August 12, 2016, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
Amanda Cloyd, Member  
Brian J. Crall, Member  
D. Brian Richmond, Member  
Mark O. Haines, Member  
Beverly H. Griffith, Member  
Mark A. Sipek, Executive Director and Secretary  
Cynthia Perkins, Administrative Section Supervisor  
Gwendolyn McDonald, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JULY 8, 2016**

The minutes of the last Board meeting had been previously circulated among the members. Chair Gillis asked for additions or corrections. Mr. Haines moved to approve the minutes, as submitted. Ms. Cloyd seconded and the motion carried 5-0. The Board members signed the minutes.

(Vice Chair Gillis did not vote, unless noted.)

[Mr. Richmond arrived at 9:50.]

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek discussed the recent efforts to update the website. The Board was given the tools to update the website from IT and Ms. Gwen McDonald has started the process to load the cases, minutes and agendas on backlog.

Mr. Sipek is obtaining information on grievances from all state agencies. Once all the information is received, the Annual Report for FY 16 will be provided to the Board.

Mr. Sipek stated that in FY 16 there was a significant increase in appeals. This is due in part to the appeals involving the Transportation Cabinet concerning salary issues, which have been pending for some time. Currently, we have received similar appeals from the Kentucky State Police (KSP). However, all the KSP appeals are represented by the same attorney and will most likely be consolidated. So although numbers are high, there are a lot of common issues.

Mr. Sipek stated he submitted a request to the Governor's office to fill the General Counsel position and is awaiting a response.

Mr. Sipek stated that the Court of Appeals upheld the Board's decision in *Veitch v. Public Protection Cabinet, Kentucky Horse Racing Commission*, concerning the issue of the appointing authority and was designated to be published. However, a Motion for Discretionary Review has been filed by counsel for Appellant. The Board should hear something from the Kentucky Supreme Court in a few months concerning that issue.

Mr. Sipek stated there are other issues to discuss, one being the Ethic's Opinion on conflict issues. However, since there is a full agenda, he advised discussing them at the end of the meeting.

At the conclusion of Mr. Sipek's report, Chair Gillis called for the Personnel Cabinet's report.

#### 4. **PERSONNEL CABINET'S REPORT**

Secretary Thomas Stephens and the Hon. Lesley Bilby were present for the Personnel Cabinet's report.

Secretary Stephens stated that this is the time of year the Cabinet is finalizing the state employees' health plan. This plan includes about 260,000 participants, which covers school systems and teachers. More information will be provided at the September meeting.

Ms. Bilby reviewed the process for removing written reprimands from an employee's official personnel file after three years of the incident. She cited 101 KAR 1:335. The employee may file a petition with the Personnel Cabinet to have a written reprimand removed from the official file. If the petition is not completely filled out, the Cabinet will typically deny the request and return the petition to the employee for completion. On occasion, there is no record of a written reprimand in an employee's file which happens if the agency did not forward a copy to the Personnel Cabinet. Mr. Haines asked if the reprimand is not routed, what happens. Ms. Bilby stated the Cabinet will contact the agency and ask that it be removed from the agency file.

Ms. Bilby stated that written reprimands are not usually appealable to the Personnel Board. If a supervisor cites 101 KAR 1:345, disciplinary regulation, in the written reprimand that may allow the employee to appeal to the Personnel Board.

Should the employee receive a suspension letter that mentions the written reprimand, the suspension letter will not be removed from the official personnel file. The Cabinet does not redact suspension letters.

In 2015 the Cabinet received 40 petitions. In 2016 the Cabinet received 21 petitions to-date. Ten have been granted, ten denied and one is being reviewed. Petitions are reviewed by the Cabinet's legal office. If the petition is denied, the employee will be notified of the reason for the denial. If the legal office approves the petition, it will be routed to the Secretary's office for signature. Chair Gillis stated that although 101 KAR 1:335 is the Personnel Board's regulation, the Personnel Cabinet actually administers it.

Another issue Ms. Bilby wanted to bring before the Board, due to budget issues, is that state agencies have provided thousands of pages of documents to Appellants, at no cost, in the course of responding to orders from the Personnel Board. The Cabinet is asking for the Board's guidance. KRS 13B.090(3), allows copies provided upon payment of fee, as governed by the Open Records Act, at approximately 10 cents per page. If the information is provided on a flash drive, the cost is about \$6 per drive. The Executive Director of Administrative Services is asking that the Cabinet look at every expenditure. Dr. Stevens asked about the usual cost of a request. Ms. Bilby responded that recently 30,000 pages were produced, between two agencies, and at 10 cents a page would cost \$3,000, which the agencies did not receive. Ms. Bilby stated that this would not apply if an employee is asking for a copy of their own personnel file, which is provided for free once per year. Secretary Stephens stated that fees would not apply for a page, or even ten pages, because it would not be feasible. This would apply to hundreds of pages. He would like to see it as the policy of the Board. Ms. Bilby explained that some documents need to be redacted before they are scanned or copied, which uses a lot of manpower. Mr. Haines did not understand why they were not already charging 10 cents per page. Secretary Stephens stated that it is the Hearing Officers that order copies at no charge. Mr. Crall asked where the Hearing Officers get that authority; which Secretary Stephens said the Cabinet does not believe they have authority. Mr. Sipek agreed, and stated he was probably one of the Hearing Officers that ordered documents be provided for free. Mr. Sipek asked if there were search costs involved (i.e. emails), which Secretary Stephens agreed there were. Mr. Sipek stated that the Hearing Officers only request copies be provided at no cost to keep the case moving forward. However, if cost is involved, the request might be more specific to what is really needed. The agencies could make records available for inspection, however, if personal information is involved that is not practical. Mr. Sipek stated that he would encourage parties to communicate to see what documents are really needed. Mr. Sipek stated that he would discuss this issue with the other Hearing Officers.

Mr. Haines moved the Personnel Cabinet can charge fair and reasonable fees, which is allowed per the Open Records Act. Mr. Richmond seconded and the motion carried 6-0. Mr. Crall explained that the intent of his vote is to advise the Hearing Officers that statutory authority exists and not to contradict what is already in the statutes.

5. **MOTIONS**

John M. Coffey v. Tourism, Arts & Heritage Cabinet/F&W (2015-179)  
--Appellee's Motion for Extension of Time

Prior to the Board meeting, Mr. Sipek provided counsel for Appellant, the Hon. Paul Fauri, a copy of Appellee's Motion for Extension of Time in which to file a response to Appellant's exceptions. Mr. Sipek stated that response time is in the Board's regulation, not in the statute. Mr. Fauri stated he had no objection to the Appellee's motion; however, at this point, he was not sure whether exceptions would be filed.

Mr. Crall moved to allow Appellee's Motion for Extension of Time to file a response. Ms. Cloyd seconded and the motion carried 6-0.

6. **ORAL ARGUMENTS**

A. Melody Westerfield v. Cabinet for Health and Family Services

Present for oral arguments were the Appellant, Melody Westerfield, and counsel for Appellee, the Hon. Blake Vogt. After presenting oral arguments, the parties answered questions from the Board.

B. Michael L. Blackburn v. Education and Workforce Development Cabinet

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri, and counsels for Appellee, the Hon. Tess Russell and the Hon. Patrick Shirley. After presenting oral arguments, the parties answered questions from the Board.

C. David Pritchard and Jimmy Treas v. Transportation Cabinet

Present for oral arguments were counsel for Appellant, the Hon. Scott M. Miller, and counsel for Appellee, the Hon. Will Fogle. After presenting oral arguments, the parties answered questions from the Board.

D. Mary K. Embry v. Department of Corrections

Present for oral arguments were the Appellant, Mary Embry, and counsel for Appellee, the Hon. Catherine Stevens. After presenting oral arguments, the parties answered questions from the Board.

7. **CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Cloyd seconded. Chair Gillis stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:10 a.m.)

Mr. Crall moved to return to open session. Dr. Stevens seconded and the motion carried 6-0. (12:20 p.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

A. **Melody Westerfield v. Cabinet for Health and Family Services (2015-190)**  
**Deferred from June Board**

Mr. Haines, having noted Appellant's motion to file late exceptions, Appellee's motion to strike Appellant's exceptions, Appellee's response to Appellant's exceptions, and oral arguments, moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

B. **Michael L. Blackburn v. Education and Workforce Development Cabinet (2015-279)**

Mr. Crall, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to defer this matter to the next Board meeting. Ms. Cloyd seconded and the motion carried 6-0.

C. **David Pritchard (2015-037) and Jimmy Treas (2015-042) v. Transportation Cabinet**

Mr. Crall, having noted Appellant's exceptions, Appellee's response, and oral arguments, moved to accept the recommended order dismissing the appeals. Ms. Cloyd seconded and the motion carried 6-0.

D. **Gillian Fell v. Department of Parks (2015-254)**

Mr. Haines, having noted Appellee's exceptions and Appellant's response, moved to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 6-0.

E. **Kevin Pinkston v. Tourism, Arts & Heritage Cabinet/State Fair Board  
(Appeal Nos. 2016-008 and 2016-015)**

Mr. Crall moved to accept the recommended order dismissing the appeals. Mr. Richmond seconded and the motion carried 6-0.

F. **Dottie Stone v. Justice and Public Safety Cabinet/Juvenile Justice (2016-084)**

Mr. Crall moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

G. **Larry Wells (2015-238) and Nicholas Vanover (2015-256) v.  
Justice and Public Safety Cabinet/Corrections**

Mr. Crall moved to accept the recommended order dismissing the appeals. Ms. Griffith seconded and the motion carried 6-0.

**Show Cause Orders – Response Filed – Appeal Dismissed**

Ms. Cloyd, having considered Appellant's response and oral arguments, moved that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Griffith seconded and the motion carried 5-1, with Dr. Stevens opposing.

H. **Mary K. Embry v. Department of Corrections (2015-289)**

**Show Cause Orders – No Response Filed – Appeals Dismissed**

Ms. Cloyd moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Crall seconded and the motion carried 6-0.

I. **Steffan Jones v. Justice and Public Safety Cabinet/Corrections (2016-009)**

9. **WITHDRAWALS**

Dr. Stevens moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Ms. Cloyd seconded and the motion carried 6-0.

- A. Anthony Hall v. Department of Corrections (2016-92)
- B. Junius Kenney v. Cabinet for Health and Family Services (2016-83)
- C. Randy Moore v. Finance and Administration Cabinet (2016-112)
- D. Jason Whisman v. Energy and Environment Cabinet (2016-47)
- E. Stephanie J. Jarrell v. Cabinet for Health and Family Services (2016-121)
- F. Veronica Baldwin v. Department of Veterans Affairs (2016-155)

10. **SETTLEMENTS**

Mr. Crall moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Griffith seconded and the motion carried 6-0. Except Settlement "D" carried 5-1, with Ms. Cloyd abstaining.

- A. Mark Fisher v. Cabinet for Health and Family Services (2016-011)
- B. Brian Boisseau v. Cabinet for Health and Family Services (2016-75) (Mediation)
- C. Kristi Kays v. Finance and Administration (2016-78) (Mediation)
- D. Kari Welch v. Finance and Administration (2016-77) (Mediation)
- E. Joe Agostini v. Justice and Public Safety Cabinet/Juvenile Justice (2015-222 and 2015-230)
- F. Jessica Poynter v. Board of Dentistry (2016-019)

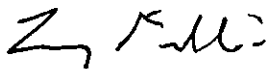
11. **OTHER**

Mr. Sipek advised that the Executive Branch Ethics Commission issued opinions as to GAPS and the Kentucky State Police and found no conflict. However, they recommended that a disclosure be made. If the Personnel Cabinet is involved in cases where they play a larger role, Chair Gillis recuses. Mr. Gillis stated that he does leave the option open whether to recuse or not when the Personnel Cabinet is involved. He does recuse from GAPS, especially if his wife is involved. Mr. Sipek provided a copy of the disclosure statement and asked the members if more or less should be added. Mr. Sipek stated that if a party objects after the disclosure is read, he would recuse as a Hearing Officer if he thought the objection was valid, especially if it impacted how cases were handled and if Hearing Officers using up their contacts. Otherwise he would recuse and provide another Hearing Officer. Mr. Crall stated that the Ethics' opinion recommended disclosure, which would disclose Chair Gillis was on the Board and his wife was an appointing authority with GAPS. Mr. Crall did not believe disclosure needed to go beyond that. Mr. Sipek asked the Board's decision on whether to get an opinion from the Kentucky Bar Association. Ms. Griffith stated she did not believe it was necessary to get an opinion from the Kentucky Bar Association.

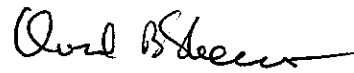
In 2010, the election for employee Board members was allowed to be completed by mail, fax, etc., for counting. Mr. Sipek stated there has been a decline in employee involvement, some excuses were they did not want to buy a stamp or they did not want to provide their Social Security Number. Although voters no longer need to use their Social Security Number, there is still a low turnout. Mr. Sipek asked whether that system could be changed and to discuss with the Personnel Cabinet if they could provide statewide voting through KHRIS, to increase enrollment and to decrease costs. Mr. Sipek stated that he wanted the Board's opinion before going forward. Mr. Crall agreed that this could be handled through KHRIS. Chair Gillis stated that they would need time to get the statute changed. Mr. Sipek stated the ballots list the names of the classified employee candidate, months of service, job title and agency. Mr. Gillis stated that in the past few years, the Board's website posted the candidates' biographies. Mr. Sipek stated that there are costs for printing, handling and postage to mail out 26,000 ballots; only to get a few returned. Mr. Sipek stated he had the guidance from the Board to begin the process and will report back.

Mr. Crall asked about the process of how Board officers are elected. Chair Gillis stated that, per statute, the Board members annually elect a Chair and Vice-Chair. The last election was in October 2015. Mr. Crall asked if the statute governs what happens if the Chair is vacant. Chair Gillis said it did not. After some discussion, it was decided that the officers would be elected at the September Board meeting.

There being no further business, Mr. Crall moved to adjourn. Dr. Stevens seconded and the motion carried 6-0. (12:45 p.m.)



Larry Gillis, Vice Chairman



David B. Stevens, Member

Amanda Cloyd, Member



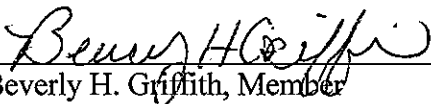
Brian J. Crall, Member



D. Brian Richmond, Member



Mark O. Haines, Member



Beverly H. Griffith, Member